Supreme Court, U.S.
FILED
SEP 29 1980
MICHAEL RODAK, JR., CLERK

No. 79-952

In the

Supreme Court of the United States

OCTOBER TERM, 1980

EDDIE C. THOMAS,

Petitioner,

vs.

REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, WILLIAM H. SKINNER, J. FRANK HALEY, and RALPH MILES, as members and as constituting the Review Board of the Indiana Employment Security Division.

and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Respondents.

On Writ of Certiorari to
The Supreme Court of Indiana.

REPLY BRIEF

BLANCA BIANCHI DE LA TORRE
Legal Aid Society of Gary, Inc.
31 E. Fifth Avenue
Gary, Indiana 46402
Tel. (219) 886-3161
Attorney for Petitioner

MICHAEL MARTIN MULDER
Project Justice & Equality
475 Broadway, Suite 401
Gary, Indiana 46402
Tel. (219) 464-5272
Attorney for Petitioner

The Scheffer Press, Inc.—(312) 263-6850

INDEX

PAGE

Argument:

I. Introduction 1

II. The Respondent Review Board has failed to distinguish this case from *Sherbert* v. *Verner* 2

III. Having conceded the lack of a compelling state interest in the State Court, the Review Board cannot now raise this issue before this Court .. 6

IV. The application of the Indiana Statute excluding religious reasons as "good cause" for termination of employment violates the free exercise clause of the First Amendment 12

Conclusion 16

TABLE OF AUTHORITIES CITED

CASES

Abington School District v. *Schempp,* 374 U.S. 203 (1963) 12

Adickes v. *Kress & Co.,* 398 U.S. 144 (1970) 8

Alexander v. *Town & Country Estates, Inc.,* 535 F. 2d 1081 (8th Cir. 1976) 8

Bates v. *Little Rock,* 361 U.S. 516 (1960) 6

Browzin v. *Catholic University of America,* 527 F. 2d 843 (D.C. Cir. 1975) 8

California v. *Taylor,* 353 U.S. 553 (1957) 8

Cantwell v. *Connecticut,* 310 U.S. 296 (1940) 6

Capps v. *Humble Oils & Refining Co.,* 536 F.2d 80 (5th Cir. 1976) 8

Cardinale v. *Louisiana,* 394 U.S. 437 (1969) 8

PAGE

Kc sman v. *American University*, 546 F.2d 1029 (D.C. Cir. 1976) 8

Lewis v. *Califano*, 616 F.2d 73 (3rd Cir. 1980) 14

Lincoln v. *True*, 408 F. Supp. 22 (W.D. Ky. 1975) 4, 5

McDaniel v. *Patty*, 435 U.S. 618 (1978) 11

McKinley v. *Review Board*, 290 N.E. 2d 108 (Ind. App. Ct. 1972) 4, 5

NAACP v. *Button*, 371 U.S. 415 (1963) 6

N.L.R.B. v. *Sears, Roebuck, & Co.*, 421 U.S. 132 (1975) 8

Ramsey v. *United Mine Workers of America*, 401 U.S. 302 (1971) 8

Sherbert v. *Verner*, 374 U.S. 398 (1963) 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

Skirvin v. *Review Board*, 355 N.E. 2d 425 (Ind. App. Ct. 1976) 4

Singleton v. *Wulff*, 428 U.S. 106 (1976) 8

Speiser v. *Randall*, 357 U.S. 513 (1958) 6

Tacon v. *Arizona*, 410 U.S. 351 (1973) 8

Thomas v. *Collins*, 323 U.S. 516 (1945) 10

Tyrrel v. *District of Columbia*, 243 U.S. 1 (1914) .. 8

West Virginia Board of Education v. *Barnette*, 319 U.S. 624 (1943) 6

Wisconsin v. *Yoder*, 406 U.S. 205 (1972) 10, 11, 12

Youakim v. *Miller*, 425 U.S. 231 (1976) 8

Youngstown Sheet & Tube Co. v. *Review Board of Indiana Employment Security Division*, 116 N.E. 2d 650 (Ind. App. Ct. 1954) 4

PAGE

CONSTITUTIONAL PROVISIONS

Constitution of the United States, Amendment I 2, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16

Constitution of the United States, Amendment XIV 10, 11

STATUTES

Indiana Code § 22-4-15-1 (Burns Code Ed. 1974) ..11, 12, 13

Indiana Code § 22-4-17-12 (Burns Code Ed. 1979 Supp.) 4

MISCELLANEOUS AUTHORITIES

"Doing Work With a Good Conscience before God and Men," *Our Kingdom Service,* September 1976, pp. 5-6 14

Altman, *Availability for Work: A Study in Unemployment Compensation* (1950) p. 187 13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 79-952

EDDIE C. THOMAS,

Petitioner,

vs.

REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, WILLIAM H. SKINNER, J. FRANK HALEY, and RALPH MILES, as members and as constituting the Review Board of the Indiana Employment Security Division.

and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Respondents.

On Writ of Certiorari to
The Supreme Court of Indiana.

REPLY BRIEF

ARGUMENT

I. INTRODUCTION

This case is controlled by *Sherbert* v. *Verner,* 374 U.S. 398 (1963), which the respondent Review Board of the

Indiana Employment Security Division (hereinafter referred to as Review Board) has failed to distinguish. Mr. Thomas has shown that the denial of unemployment compensation benefits to him constitutes an impermissible burden on his First Amendment right to the free exercise of religion. The Review Board claims that there is no direct burden on petitioner's First Amendment rights, but does not deny indirect infringement. However, it attributes this indirect infringement to Thomas' lack of diligence.

Until now the respondent has conceded having no compelling state interest to justify such infringement. Even its belated claims of a compelling state interest, improperly raised for the first time before this Court, would not override petitioner's legitimate claim to the free exercise of religion. Thus, respondent has failed to meet the test advanced by this Court in *Sherbert, supra,* and the decision of the Supreme Court of Indiana should be reversed.

II. THE RESPONDENT REVIEW BOARD HAS FAILED TO DISTINGUISH PETITIONER'S CASE FROM SHERBERT V. VERNER.

In its effort to show that the denial of unemployment compensation to Eddie C. Thomas did not burden his right to the free exercise of religion, therefore making this case distinguishable from *Sherbert* v. *Verner, supra,* the Review Board has made certain representations in its brief which are contrary to the factual record established in this case. The Review Board relies on these misrepresentations to persuade this Court to find that any indirect burden on Thomas' free exercise rights resulted from his own lack of diligence. The review of the record set forth will show that such conclusion cannot be reached in this case.

At p. 3 of Respondent's Brief (hereinafter referred to as "Resp.Br.") the Review Board states: "Thomas requested a lay off, though not a transfer; when a lay off was denied, petitioner quit on November 6, 1975, asserting that he could not continue to work in that facility." *See also,* Resp.Br. p. 9. In the Findings and Conclusions of the Referee's decision of February 24, 1976, it is stated:

> "Claimant continually searched for a transfer to another department which would not be so armament related; however, this did not materialize, and prior to the date of his leaving, claimant requested a lay-off which was denied; and on November 6, 1975, claimant did quit due to his religious convictions".

Petitioner's Appendix p. 2a, contained in the Petition for Certiorari, and hereinatfer referred to as "Pet.App.".

The Review Board claims that: "Thomas sought his original job at Blaw-Knox in spite of the fact that, as the record shows, the entire company was involved in the production of armaments". Resp. Br. p. 7. This assertion has no support in the Statement of Facts of the Review Board's decision of November 29, 1976, where the respondent concluded:

> ". . . [H]e left his employment voluntarily because his religious beliefs as a Jehovah Witness [sic] would not allow him to continue to work producing arms after being transferred from his original department which was not engaged in the manufacture of items used in the advancement of war."

Pet. App. 5a. Thus, the roll foundry, for which Thomas was especially hired, was not involved in the production of armaments.

The Review Board alleges that the personal problems created by Thomas' religious objection to contributing to the furtherance of war existed from the very first day of his employment, and that any burden on his First Amendment rights resulted from his negligence in failing to seek information as to the nature of his employment. Resp. Br. p. 7-8. The record again proves respondent's allegations incorrect. The referee concluded:

> "The evidence reveals that approximate [sic] two to three weeks prior to the claimant's date of leaving, the "Roll Foundry" was closed permanently and claimant was transferred to the terret [sic] line. Claimant, at this time, real [sic] realized that all of the other functions at the Blaw-Knox Company were engaged in producing arms for the Armament Industry".

Pet. App. 2a. Thus, during his first year of employment at Blaw-Knox, petitioner's job was not in conflict with his religious beliefs.

Under Indiana law, these determinations of fact are "conclusive and binding", Ind. Code 22-4-17-12 (Burns Code Ed. 1979 Supp.), and an Appellate Court may reverse them only if reasonable men would be bound to reach a different conclusion. *Skirvin* v. *Review Board,* 355 N.E. 2d 425 (Ind. App. Ct. 1976); *McKinley* v. *Review Board,* 290 N.E. 2d 108 (Ind. App. Ct. 1972) *aff'd,* 301 N.E. 2d 845 (Ind. S.Ct. 1973), *cert denied* 415 U.S. 985; *Youngstown Sheet and Tube Co.* v. *Review Board of Indiana Employment Security Division,* 116 N.E. 2d 650 (Ind. App. Ct. 1954). In this case, these findings were affirmed by the Supreme Court of Indiana. Pet. App. 35a.

The Review Board attempts to distinguish petitioner's case from both *Sherbert* and *Lincoln* v. *True,* 408 F.

Supp. 22 (W.D.Ky. 1975), by indicating that the plaintiffs in both cases were "involuntarily put in this unacceptable position of choice", whereas "Thomas should have known when he started working at Blaw-Knox that the company was, as a whole, engaged in the production of armaments". Resp. Br. p. 9. It has been shown that Thomas did not realize the armament-producing nature of Blaw-Knox until after his involuntary transfer to the turret line. Thomas did not create the conflict between his employment and his religious beliefs; he had no control over the circumstances that ultimately led to his transfer to the turret line. Similarly, Adell Sherbert had no control over her employer's decision to change all shifts to a six day work week, including her Sabbath which fell on Saturday. Moreover, Ethel Lincoln felt bound to accept the decision of the elders of the Jehovah's Witnesses congregation that her continued employment in the manufacture of tobacco was against the will of God, even though she had been employed in the tobacco industry for 21 years. As in the instant case, the only reason Sherbert and Lincoln were unemployed was because of their religious beliefs, and their ineligibility for benefits derived solely from the practice of their religion. The pressure upon them to forego that practice is unmistakable. They are forced to choose between the precepts of religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of religion in order to accept work, on the other hand. *Sherbert, supra,* at 404. Because Thomas was also faced with this impermissible choice, *Sherbert* and *Lincoln* control this case and in accordance with the holdings therein, the decision of the Supreme Court of Indiana should be reversed.

III. HAVING CONCEDED THE LACK OF A COMPELLING STATE INTEREST IN THE STATE COURTS, THE REVIEW BOARD CANNOT NOW RAISE THIS ISSUE BEFORE THIS COURT.

The First Amendment to the United States Constitution declares that Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof. This fundamental right is protected from state infringement by the Fourteenth Amendment. *NAACP* v. *Button,* 371 U.S. 415 (1963); *Bates* v. *Little Rock,* 361 U.S. 516 (1960); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940). First Amendment freedoms are susceptible of restrictions only to prevent grave and immediate danger to interests which the state may lawfully protect. *West Virginia Board of Education* v. *Barnette,* 319 U.S. 624, 639 (1943). Thus, if the challenged state action is to withstand constitutional challenge

> "it must be either because her disqualification as a beneficiary represents no infringement by the state of her constitutional rights of free exercise, or because an incidental burden on the free exercise of appellant's religion may be justified by a 'compelling state interest in the regulation of a subject within the state's constitutional power to regulate'. . . ."

Sherbert v. *Verner,* 374 U.S. 398, 403 (1963). *See also, generally, Speiser* v. *Randall,* 357 U.S. 513 (1958).

The respondent Review Board has attempted, for the first time in these proceedings, to advance a compelling state interest. This position of the Review Board is not only unsupported by the record of the proceedings below, but it is in direct conflict with the same.

In appealing the decision of the Review Board to the Indiana Court of Appeals, the petitioner argued that the denial of unemployment compensation benefits to him

constituted an impermissible burden on his First Amendment right to the free exercise of religion. The Review Board's argument focused on the good cause requirement in cases of voluntary termination, and on alleged differences that made *Sherbert* distinguishable from the instant case. No compelling state interest was raised in the Review Board's brief on the merits. In oral argument, the Board, in fact, conceded that should the Court find a burden on Thomas' First Amendment rights, no compelling state interest could be offered in justification. Pet. App. p. 13a.

On transfer to the Supreme Court of Indiana, the Review Board again failed to advance a compelling state interest which would override Thomas' right to the free exercise of religion. In urging reversal of the Court of Appeals, the Review Board alleged, *inter alia,* that the decision ". . . should be reversed because it erroneously decides a new question of law, to wit: whether an employee who voluntarily quits his employment because such employment conflicts with his religious beliefs is ineligible for unemployment compensation benefits for having voluntarily left his employment without good cause in connection with the work." (No. 2-1276 A 491 Ind. S. Ct., Petition for Transfer, p. 1) The brief in support of this petition was again silent on the issue of a compelling state interest. The Supreme Court of Indiana embarked on an impermissible and improper inquiry into the nature and basis of Thomas' religious beliefs, and concluded that his First Amendment rights had not been abridged by the denial of unemployment benefits to him. Thus, no compelling state interest was raised or briefed, and none was considered by the State Court. Pet. App. p. 26a-49a.

Finally, in its brief in opposition to the Petition for a Writ of Certiorari to the Supreme Court of Indiana, the

respondent Review Board again failed to assert a state interest to override Thomas' legitimate claim to the free exercise of religion. This Court has consistently held that it will not decide issues raised for the first time before it, which were never raised, preserved or passed upon in the state court below. *Tacon* v. *Arizona,* 410 U.S. 351, 353 (1973); *Ramsey* v. *United Mine Workers of America,* 401 U.S. 302, 312 (1971); *Cardinale* v. *Louisiana,* 394 U.S. 437 (1969). The questions which the Court will consider must properly arise in the record, *Tyrrell* v. *District of Columbia,* 243 U.S. 1 (1914), and must have been argued and briefed below, *California* v. *Taylor,* 353 U.S. 553, 557, n.2 (1957) *See also, Youakim* v. *Miller,* 425 U.S. 231 (1976). *Singleton* v. *Wulff,* 428 U.S. 106 (1976); *Adickes* v. *Kess & Co.,* 398 U.S. 144, 147, n.2 (1970). The same result has also been reached where a point was raised in the Court of Appeals but not discussed in that court's opinion. *N.L.R.B.* v. *Sears, Roebuck, & Co.,* 421 U.S. 132, 163-164 (1975). Similarly, a party cannot raise a new theory on appeal that was not presented to the court below, *Capps* v. *Humble Oils & Refining Co.,* 536 F. 2d 80 (5th Cir. 1976), and an Appellate Court will not decide a case on a legal theory directly contrary to that advanced in the lower court. *Alexander* v. *Town & Country Estates, Inc.,* 535 F. 2d 1081 (8th Cir. 1976) *See also, Kassman* v. *American University,* 546 F. 2d 1029 (D.C. Cir. 1976); *Browzin* v. *Catholic University of America,* 527 F. 2d 843, 849 n.2 (D.C. Cir. 1975).

This Court faced a similar situation in *Sherbert* when the South Carolina Employment Security Commission attempted to introduce additional grounds to justify the impermissible burden on appellant's First Amendment rights. In rejecting the claim that granting unemploy-

ment benefits to Adell Sherbert would not only inspire the filing of claims by unscrupulous persons feigning objections to Saturday work, but also dilute the unemployment compensation fund, the Court stated:

> "[T]hat possibility is not apposite here because no such objection appears to have been made before the South Carolina Supreme Court, and we are unwilling to assess the importance of an asserted state interest without the views of the state court."

Sherbert, supra, at 407. The Court, however, also held:

> "Nor, if the contention had been made below would the record appear to sustain it; there is no proof whatever to warrant such fears of malingering or deceit as those which the respondents now advance. Even if consideration of such evidence is not foreclosed by the prohibition against judicial inquiry into the truth or falsity of religious beliefs, *United States* v. *Ballard,* 322 U.S. 78, 64 S.C. 822, 88 L. Ed. 1148 — a question as to which we intimate no view since it is not before us — it is highly doubtful whether such evidence would be sufficient to warrant a substantial infringement of religious liberties. For even if the possibility of spurious claims did threaten to dilute the fund and disrupt the scheduling of work, it would plainly be incumbent upon the appellees to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights." (citations omitted).

Id., at 407.

The Review Board now alleges the existence of an overriding public interest in regulating the expenditure of funds for unemployment compensation by means of the good cause regulation. "It is basic that no showing merely of a rational relationship to some colorable state

interest would suffice; in this highly sensitive constitutional area, only the greatest abuses, endangering paramount interests, give occasion for permissible limitations." *Sherbert* v. *Verner, supra,* at 406, citing *Thomas* v. *Collins,* 323 U.S. 516, 530 (1945). As noted above, the *Sherbert* Court concluded that prevention of the filing of spurious claims was not sufficient to justify the burden cast on Adell Sherbert's First Amendment rights.

The Review Board further urges this Court to consider the dangers of violating the Establishment Clause, the Equal Protection provisions of the Fourteenth Amendment, and the fact that there is no less restrictive method of achieving the state's goals. Resp. Br. p. 14. The *Sherbert* Court clearly indicated that extension of unemployment benefits to the appellant therein did not foster the establishment of the Seventh-Day Adventist religion in South Carolina. *Sherbert, supra,* at 409. A similar concern was before this court in *Wisconsin* v. *Yoder,* 406 U.S. 205, 221 (1972) and then this Court said:

> "The Court must not ignore the danger that an exception from a general obligation of citizenship on religious grounds may run afoul of the establishment clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise. By preserving doctrinal flexibility and recognizing the need for a sensible and realistic application of the Religion Clauses
>
> > 'we have been able to chart a course that preserves the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope' and one we have successfully traversed'. *Walz* v. *Tax Commission, supra,* at 672, 90 S. Ct. at 1413."

Thus, extending unemployment compensation benefits to the petitioner in this case will again preserve doctrinal flexibility in approaching the inherent conflict between the Religion Clauses of the First Amendment. Such flexibility is not possible under the "all or nothing" approach suggested by the respondent. Resp. Br. p. 15.

The remaining two claims raised by the Review Board—possible violations of the Equal Protection provision of the Fourteenth Amendment and no less restrictive way of achieving the state's secular goals—are totally unsupported by the record and have been raised now for the first time in these proceedings. For the reasons advanced previously in this section, the same should not be considered by this Court. Moreover, this Court was aware of such arguments in *Sherbert* and did not find them persuasive. *Sherbert* v. *Verner,* 374 U.S. 398, 422 (1963) (Harlan, J., dissenting). Even assuming, *arguendo,* that its recently found compelling state interest argument were to be considered by this Court, the Review Board has failed to make an adequate showing that said interest overrides the petitioner's right to the free exercise of religion and that there is no alternative form of regulation that will adequately protect the state interest. *McDaniel* v. *Patty,* 435 U.S. 618, 628 (1978); *Wisconsin* v. *Yoder,* supra, at 215, *Sherbert, supra,* at 408.

In his brief on the merits, the Petitioner has already addressed himself to the inhibitory effects of the application of the disqualifying provisions of the Indiana Employment Security Act, Indiana Code 22-4-15-1, (Burns Code Ed. 1974), on his right to the free exercise of religion. *See,* Brief for Petitioner, pp. 10-18. In light of the concession of the Review Board that it has no compelling state interest to justify the infringement of

Thomas' First Amendment rights, and because its belated claims do not override petitioner's right to the free exercise of religion, the decision of the Supreme Court of Indiana should be reversed.

IV. THE APPLICATION OF THE INDIANA STATUTE EXCLUDING RELIGIOUS REASONS AS "GOOD CAUSE" FOR TERMINATION OF EMPLOYMENT VIOLATES THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.

The Respondent Review Board argues that Thomas voluntarily left his employment without "good cause" since his reasons for leaving were personal and not objectively related to the employment. Resp. Br. 15-16. The opinion of the majority of the Indiana Supreme Court is similar. Pet. App. p. 32a. The Supreme Court of South Carolina affirmed the denial of unemployment compensation benefits to Ms. Sherbert on nearly identical grounds in *Sherbert* v. *Verner,* 240 S.C. 286, 125 S.E. 2d 745 (1962); however, these reasons were rejected by this Court on appeal.

All that is required of petitioner Thomas is that he show that the denial of unemployment benefits to him has a "coercive effect" on the practice of his religion. *Abington School District* v. *Schempp.* 374 U.S. 203, 223 (1963). Once this is shown, the Review Board must prove both that a compelling state interest justifies the regulation and that there exist no less restrictive means to enforce the state's interest. *Wisconsin* v. *Yoder,* 406 U.S. 205, 215 (1972).

The coercive effect of the disqualifying provisions of the Indiana Employment Security Act, Indiana Code § 22-4-15-1 (Burns Code Ed. 1974), on petitioner's free

exercise rights is the same as that recognized in *Sherbert* v. *Verner,* 374 U.S. 398, 403 (1963). The application of I.C. § 22-4-15-1 to find no "good cause" in circumstances where a religious belief causes the severance of employment forces persons to choose between following the precepts of their religion and forfeiting benefits, or abandoning their religion in order to remain employed. This coercive choice violates the free exercise clause regardless of whether one was fired by an employer for refusal to work, as Sherbert was, or whether one quits work as Thomas did.[1] *Sherbert* requires the State to treat the religious convictions in both instances as "good cause," particularly since no compelling state interest has been offered by respondent, as previously discussed in argument III of this brief.

The Review Board challenges the sincerity of Thomas' religious belief. It argues that Blaw-Knox produced armaments when petitioner sought employment and it criticizes petitioner for having no religious objection to working in the roll foundry where petitioner was not involved in the direct fabrication of tanks, but instead was involved at a much earlier stage of production where the raw product was being developed. Resp. Br. 16. The facts with regard to these contentions are clear. When Thomas began work at Blaw-Knox he did not know the company was involved in the production of armaments. Pet. App. p. 2a-3a. Indeed, Thomas did not realize this

[1] In passing, this Court noted one author's observations that strongly held religious convictions are so impelling as to constitute good cause for refusal. Altman, *Availability for Work: A Study in unemployment Compensation* (1950), 187. *Sherbert* v. *Verner,* 374 U.S. 398, 407 n.7 (1963).

until he was transferred to a position on the tank turrent line, Pet. App. p. 2a, and prior to the transfer he was not engaged in the production of armaments. Pet. App. 1a-5a.

The fact that Thomas' religious beliefs permitted him to work at an early stage of the production as opposed to participating in the manufacture of a tank turret is a belief that is protected by the First Amendment. This is true even though Thomas' conviction may be an individual belief, not adopted by, but consistent with the view of his sect. What was stated recently in *Lewis* v. *Califano,* 616 F. 2d 73, 79 (3rd Cir. 1980) is applicable here:

> The First Amendment was designed in large part to protect freedom of conscience. Note, "Toward a Constitutional Definition of Religion," 91 Harv. L. Rev. 1056, 1058 (1979). To fulfill this goal adequately, the Amendment may be read to accomodate the conscience of each individual. Merel, "The Protection of Individual Understanding of Religion Under the First Amendment," 45 Chicago L. Rev. 805 (1978). Like the rest of the First Amendment, the free exercise clause should be sensitive to the conscience of individuals.

An individual interpretation of and adherence to the teachings of the Bible is in agreement with the beliefs of Jehovah's Witnesses, as explained in the following passage from one of their publications:

> In many areas of life, including employment, we must allow our conscience, enlightened by God's Word and his spirit, to guide us. Another member of the Christian congregation may have no qualms of conscience about the propriety of a certain type of employment. But our own conscience may cause us to have doubts. Should we ignore these doubts

> and let the other person's conscience decide for us? The apostle Paul provides the inspired answer in his discussion concerning the eating of meat, saying: "If he has doubts, he is already condemned if he eats, because he does not eat out of faith. Indeed, everything that is not out of faith is sin." (Rom. 14:23) Thus, when a person feels ill at ease about certain work and cannot justify it in his own conscience, he acts wisely to make a change. He thereby avoids sinning in the sense of going against his conscience, wounding it. At the same time, one's uncertainty and "inward questionings" about the rightness of certain work should not cause him to become critical of others, making an issue of matters unnecessarily or judging them as violators of God's law when there is no clear Scriptural evidence to that effect.

"Doing Work With a Good Conscience Before God and Men", *Our Kingdom Service,* September 1976, pp. 5-6. Thus, Thomas was compelled to follow the dictates of his conscience. The fact that other Jehovah's Witnesses remained employed at Blaw-Knox in no way diminishes or taints petitioner's legitimate claim to the free exercise of religion. The application of the Indiana Statute to Thomas' situation violates the free exercise clause of the First Amendment.

CONCLUSION

For the above reasons petitioner respectfully submits that the decision of the Indiana Supreme Court is contrary to the First Amendment and precedents of this Court and must be reversed.

Respectfully submitted,

BLANCA BIANCHI DE LA TORRE
Legal Aid Society of Gary, Inc.
31 E. Fifth Avenue
Gary, Indiana 46402
Tel. (219) 886-3161
Attorney for Petitioner

MICHAEL MARTIN MULDER
Project Justice & Equality
475 Broadway, Suite 401
Gary, Indiana 46402
Tel. (219) 464-5272
Attorney for Petitioner